IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOS : 12304 of 1996 & 16006, 16072 AND 16079 OF 1991

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WRIT PETITION NO: 12304 of 1996

Between:

1 Valluru Basavaiah Chowdary S/o.Keshava Rao
R/o.Patamatalanka,Vijayawada
2 Valluru Krishna Rao S/o.Keshava Rao
R/o.Patamatalanka,Vijayawada
3 Valluru Chandrashekara Rao S/o.Keshava Rao
R/o.Patamatalanka,Vijayawada
4 Valluru Madhusudhana Rao S/o.Keshava Rao
R/o.Patamatalanka,Vijayawada

..... PETITIONERS

AND

1 Government of Andhra Pradesh rep.by its Secretary for Revenue (UC-III) Department
Secretariat Buildings Hyderabad.
2 Special Officer and Competent Authority Urban Land Ceiling
Vijayawada
3 Commissioner of Land Reforms Urban Land Ceiling
Nampally Road Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records in Memo.No.1249/Uc.III(2)/87-19, dated 5-6-1996 of the 1st respondent and issue a Writ of Mandamus declaring it to be invalid and to direct the 1st respondent to consider the application dated 18-4-1994 and the Representations

dated 9-6-1991 and 23-12-1995 of the petitioners in the light of the letters of consent dated 6-5-1991 and 8-9-1995 of the A.P State Warehousing Corporation and the recommendations of Respondents 2 and 3 and to grant exemption under section 20 of the urban land ceiling act with respect to 7328 Sq.Meters of land in N.T.S.No.143/3 of Patamata,Vijayawada.

Counsel for the Petitioners:MR.P.M.GOPAL RAO

Counsel for the Respondents: GP FOR ASSIGNMENT,

WRIT PETITION NO : 16006 of 1991

Between:

V.Basavaiah Chowdary S/o.Kesava Rao
Vijayawada

..... PETITIONER

AND

1 Special Officer and the Competent Authority Urban Land Ceilings Vijayawada.
2 Commissioner of Land Reforms and Urban Land Ceilings (Appellate Authority under Urban Land Ceiling Act) Hyderabad.
3 Government of A.P Rep.by its Secretary for Revenue Secretariat Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records and quash the orders in C.No.B-4/2607/80 dated 30-9-1981 of the 1st respondent and the order in C.No.AU/C2/1656/82, dt.19-8-1991 of the 2nd respondent by the issue of a Writ of Certiorari and further direct them to delete from the petitioner's holding under the Urban Land Ceiling Act the following Extents NTS.No.35/2 of Patamata Village - 1417 Sq.Meters, NTS.No.143/3 of Vijayawada, W.No.11,B.No.7 - 1000 Sq.Meters, NTS.No.47 of Mogalrajapuram - 6900 Sq.Meters and to issue such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.P.M.GOPALA RAO

Counsel for the Respondents: GP FOR LAND ACQUISITION,

WRIT PETITION NO : 16072 of 1991

Between:

1 Valluri Madhusudhana Rao S/o.Keshava Rao
Patamata Vijayawada.
2 Valluri Chandrashekar S/o.Keshava Rao
Patamata Vijayawada.

..... PETITIONERS

AND

1 Special Officer and the Competent Authority Urban Land Ceilings
Vijayawada
2 Commissioner, Land Reforms and Urban Land Ceilings (Appellate Authority under Urban Land Ceilings Act)
Nampally Road Hyderabad.
3 Govt. of Amdhra Pradesh Rep.by tits Secretary for Revenue
Secretariat Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Certiorari quashing the order dated 19-8-1991 in AUC.2/1653/82 and AUC.2/1654/82 of the 2nd respondent affirming the order dt.27-1-1982 in C.C.B4/2659/81 and 2658/81 of the 1st respondent and to issue a direction to the 3rd respondent to grant exemptions with respect to the petitioner's holding in Sy.No.512, & 77/1 of Mogalrajapuram in R.S.35/2 of patamata and NTS.No.106 of Vijayawada, R.S.No.282/5A of Gunadala villages under G.O.Ms.No.136, Revenue, dt.28-1-1981 to enable the petitioner to hold and sell their respective extents in the above numbers to the vijayawada sub-urban Coop.House Building Society and also to grant exemption under Section 20(1)(a) of the Act for the remaining extent of 7328 square meters in S.No.143/3 of Patamata in pursuance of the application in June 1991 for construction of Godowns and leasing to the A.P.State Warehousing Corporation as per the guidelines contained in A.P.Govt. Memo 44/UC-111/77-1 dated 31-1-1977 and the govt. of India's instructions vide a letter No.2/2/77 U.C.U. dt.11-9-1977.

Counsel for the Petitioner:MR.P.M.GOPALA RAO

Counsel for the Respondents: GP FOR ASSIGNMENT,

AND

WRIT PETITION NO : 16079 of 1991

Between:

Valluri Krishna Rao S/o.Keshava Rao
Patamata Vijayawada

..... PETITIONER

AND

1 Special Officer and the Competent Authority Urban Land Ceilings
Vijayawada
2 Commissioner, Land Reforms and Urban Land Ceiling (Appellate Authority under Urban Lanmd Ceilings Act) Nampally Road Hyderabad.
3 Govt. of A.P rep.by its Secretary for Revenue
Secretariat Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of Certiorari quashing the order dated 15-7-1991 in AUC.2/1655/82 of the 2nd respondent affirming the order dt.27-1-1982 in C.C.B3.2660/81 of the 1st respondent and to issue a direction to the 3rd respondent to grant exemption with respect to the petitioner's holding in Sy.No.512, 77/1 of vijayawada and R.S.35/2 and 30-7 of patamata in accordance with the G.O.Ms.No.136 Revenue, dt.28-1-1991 to enable the petitioner to hold and sell the same to the Vijayawada sub-urban Coop.House Building Society and to grant exemption to the petitioner with respect to his remaining extent in NTs.No.143/3 of Vijayawada in pursuance of his application dt.18-4-1984 and June, 1991 for construction of Godown and leasing out to the A.P.State Warehousing Corporation as per the guidelines contained in A.P.Govt. Memo 44/UC.No.111/77-1 dated 31-1-1977 and the govt. of India instructions vide letter No.2/2/77 U.C.U. dt.11-9-1977.

Counsel for the Petitioner:MR.P.M.GOPALA RAO

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

W.P.NOS.12304 OF 1996 & 16006,

16072, 16079 OF 1991

COMMON ORDER:

Heard Sri P.M.Gopal Rao, the learned Counsel appearing on behalf of the petitioners and the learned Government Pleader for Revenue and Assignment on behalf of the respondents.

The petitioners in W.P.Nos.16079, 16072, 16006 of 1991 are brothers and all the said brothers along with another brother filed another writ petition in W.P.No.12304 of 1996. Since common question arises in all these matters, they are being taken up together for disposal.

In all these Writ Petitions arise out of the proceedings under the Urban Land (Ceiling and Regulation) Act 1976, (for short 'the Act'), which were taken recourse to in pursuance of the declarations filed by all the brothers separately and the orders passed by the Special Officer holding that the petitioners are surplus holders and the same having been confirmed in appeal by the appellate authority. The petitioners also challenge the orders rejecting the applications filed under Section 20 of the Act seeking exemption. The main questions arising in all these writ petitions are as to whether the agricultural land both classified in Revenue records and amended

Master Plan becomes vacant land by inclusion in municipal area; and whether the area to which exemption was granted under G.O.Ms.No.250 dated 17-02-1984 is liable to be excluded from the computation of holding.

The main question arising in the W.P.No.16072 of 1991 is as to whether the land in village site used for keeping cattle, hayricks and manure pits is vacant land or not.

The main question arising in the W.P.No.16072 and 16079 of 1991 is as to whether the petitioners are entitled for the exemption in pursuance of the applications filed by them on 15-01-1982, 28-01-1982 and 25-01-1982. The petitioners also challenge the orders rejecting their request for exemption as per the order dated 23-06-1997. There is also no dispute to the fact that the petitioners have declared the land wherein they were found to be surplus and though they have raised several objections in regard to the inclusion and the land in their holding the same was neither accepted nor acceded to by the authorities and rejected by both the primary tribunal and also in appeal. Even the request for exemption was also having stood negatived. The petitioners sought to raise all these questions in these writ petitions.

In W.P.No.16079 of 1991 the petitioner seeks exemption under G.O.Ms.No.136 dated 28-01-1981 in respect of the land in Sy.Nos.30/7 of Patamata, 512, 77/1 of Vijayawada, 35/2 of Patamata. Similarly he seeks exemption in respect of the land in Sy.No.143/3 of Vijayawada on the ground that the same was leased out to Food Corporation of India. It is also his case that he is intended to sell the said land to Vijayawada Sub-urban Cooperative House Building Society. Therefore he sought exemption under G.O.Ms.No.136 dated 28-01-1981. In respect of the land, which has been exempted under G.O.Ms.No.250 Dated 17-02-1984, the case of the petitioner was that the said land was once again included in the computation and therefore the same has to be excluded.

In W.P.No.16072 of 1991, the petitioners therein similarly seeks exemption under G.O.Ms.No.136 dated 28-01-1981 in respect of the land in Sy.Nos.713, 1416,3237,6238 and 2832. Certain extent has already been exempted under G.O.Ms.No.250 dated 17-02-1984, which is liable to be excluded according to the petitioner. Further, an area covered by the hayricks and manure has not been exempted.

In W.P.No.16006 of 1991, substantial portion of the land in Sy.Nos.25/2, 143/2 and 47 has already been exempted under G.O.Ms.No.250. Therefore, the said extent ought to have been excluded. Apart from the other grounds raised in respect of the land to show as agricultural land and therefore they could not have been included.

In W.P.No.12304 of 1996 all the brothers together seek to assail the orders rejecting the request for exemption. It is their case that very reasons as shown for rejection are not valid and the petitioners ought to have been given the said benefit, especially in view of the lease with the Food Corporation of India.

Having considered the submissions made and also on perusal of the material there is no dispute to the aforesaid basic facts, which are being sought to agitate by the petitioners herein both on the ground of exclusion and also exemption. In these matters the orders have been passed quite sometime back and having regard to the subsequent developments and applying the very principles in G.O.Ms.No.136 dated 28-01-1981 in respect of similarly placed there is no reason as to why the petitioners are not entitled for such an exemption. Even in regard to the plea that the land is agricultural land and therefore the same is liable to be excluded, apart from the other land covered by the cattle, hayricks, manure pits etc., the same also required to be reconsidered. Even in these aspects it is now well settled that a declarant is entitled for similar such exemptions.

Having given a due consideration to these submissions and also the questions involved, it is felt that the matter requires a fresh approach rather than rejecting at this length of time by taking into consideration the principles as applied to and as held by this Court and also the Apex Court.

In the circumstances, all the Writ Petitions are allowed and all the appeals filed by the petitioners are remitted to the appellate authority and the applications filed under Section 20 of the Act is also remitted to the Government for fresh consideration and disposal on merits after giving notice and opportunity to both sides. No costs.

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B.PRAKASH RAO, J.

Dated 02-08-2004.

SKMR

That Rule Nisis have been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Second Day of August Two thousand and Four.

To

1 The Secretary for Revenue (UC-III)

Department Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.

2 Special Officer and Competent Authority Urban Land Ceiling
Vijayawada.
3 Commissioner of Land Reforms, Urban Land Ceiling,
Nampally Road, Hyderabad.

4. 2CCs to G.P. for Assignment, High Court of A.P., Hyderabad.(OUT).

5. 2CCs to the Govt. Pleader for Land Acquisition, High Court of A.P.,

Hyderabad(OUT).

6. 2 CCs to the Govt. Pleader for Revenue, High Court of A.P.(OUT).

7. 2CD copies